FRANCHISING AUTHORITY / *STANDARD*	Sacramento, California	District of Columbia (Proposed)	Manhattan, New York	New York State	NCTA SUGGESTED STANDARDS
			MISCELLANEOUS STANDARDS		
Cable Guide		Company must provide a guide of PEG programming.	Company must provide a guide of programming on access channels.		
Channel location card			Company must provide and annually update a channel lineup card.		
Customer credit reporting	Company may not provide any negative report to a credit agency without providing notice to subscriber 7 business days ahead of time if by mail or 5 business days prior if in person.	If company refers a report of a delinquent account to a credit agency less than 10 days after account becomes delinquent. The company must notify the agency that the referral was in error, and pay the subscriber $500.	The company must not, and instruct all collection agencies not, to refer any delinquent account to a credit agency. If the company refers a delinquent account less than 10 days after account becomes delinquent, it must notify the credit agency of the error and pay the subscriber $500.		
Customer service supervisor response	Any request to speak with a supervisor must be filled within 4 business hours.		Requests to speak to supervisors must be filled as soon as possible, but no later than 4 business hours after the request.		

FRANCHISING AUTHORITY	Sacramento, California	District of Columbia (Proposed)	Manhattan, New York	New York State	NCTA SUGGESTED STANDARDS
STANDARD					
Foreign language requirements for customer service representatives		Several employees at the company's offices must speak the languages used by a substantial percentage of subscribers, particularly Spanish.	Company must have office employees who speak any language used by a substantial number of subscribers.		
Damaged equipment		Subscriber is not liable for loss or damage caused by acts or events outside the subscriber's control.	Subscriber is not liable for loss or damage caused by acts or events outside the subscriber's control.	Companies may charge customers for lost, stolen or damaged equipment, but only after providing the customer with notice and opportunity to appeal to the State Cable Commission.	

ATTACHMENT B

CUSTOMER SERVICE STANDARDS RECOMMENDED BY LOCAL GOVERNMENTS

ISSUE	STANDARD
Customer Service Representatives (working hours)	Offices must be staffed a minimum of 50 hours per week, with at least 9 hours per weekday and 5 hours per Saturday.
Customer Service Representatives (after hours)	Local number or toll-free lines to be answered 24 hours per day either by staff or by answering service. Emergency referral information operational 24 hours per day.
Telephone service time requirements	Company must maintain a state-of-the-art telephone system. Calls answered in 4 rings. Lost calls not to exceed 4-1/2%. Maximum 30 second hold. Overflow device for customers to leave messages triggered by a maximum of 20% of callers.
Walk-in office hours	Office must be open at least 50 hours per week, with at least 9 hours per weekday and 5 hours per Saturday.
Customer complaint and service handling reports	Company must compile a quarterly report of telephone efficiency (including statistics on busy signals and response time), and reports detailing customer service requests, outages and repairs.
Customer service representative/ employee identification	Employees who come to customers' residences must wear current picture identifications. Other company employees must wear name badges.

ISSUE	STANDARD
Handling of service calls	Must be acknowledged within 24 hours; off premises repairs must be completed within 24 hours; all others within 48 hours. No charge allowed in absence of subscriber negligence or abuse.
Service call scheduling	Appointments must be made either at a specific time or within a 4-hour time block, with adequate appointment time available during evenings and weekends. The company may not cancel any appointment less than 24 hours before the appointment time.
Credit for missed service calls	For a failure to meet an appointment within the specified parameters, the company must, at the customer's discretion, give credit for one month's free service.
Service interruption for system repair	Company must give at least 48 hours notice, and should not interrupt service except between 1 a.m. and 6 a.m.
Service of outages	Outages must be responded to and corrected promptly, and in no event later than 12 hours after the company is notified.
Credit for service outages	Company must give 24-hour credit for every outage lasting more than 4 hours in any 24 hour period or calendar day.
Credit for reception problems	Subscribers with reception problems remaining unrepaired 48 hours after the problem is reported are entitled to one day's credit for each 24 hour period in which the problem persists for at least 4 hours.

ISSUE	STANDARD
Installation scheduling and priorities	Installation must be performed within 7 business days after order is placed. Appointments must be made either at a specific time or within a 4-hour time block.
Billing and billing disputes	Bills must be monthly and itemized. Bills must include the franchising authority's telephone number. The company must review billing disputes within 20 days. The customer has 10 business days thereafter to file an appeal to the franchising authority.
Late Charges	Late fees not exceeding the maximum percent allowed by law may be applied to a delinquent bill. Late charges may not be imposed until 45 days after the bill is mailed.
Resolution of service-related disputes	Company must semiannually provide notification to all customers that they may refer unresolved disputes to local franchising authority. All complaints should be resolved as soon possible, but no later than 10 business days after the complaint is received. Acknowledgment of receipt of written complaint must be made within 2 business days.
Voluntary disconnection	Customer may request disconnection at any time without charge. Disconnection must occur as soon as possible, but no later than five days following the request. Deposit must be returned within 30 days after all equipment returned.

ISSUE	STANDARD
Involuntary disconnection	Company may not disconnect until five days after customer is personally given separate notice, or 8 days after notice by mail, of delinquency. Subscriber is considered delinquent 45 days after bill is mailed, provided no bill shall be mailed more than 15 days prior to the date services covered by such bill commence. A subscriber may only be disconnected if subscriber tampers with equipment or payment is delinquent 45 days after the bill is mailed, and only then after 8 days following mailed notice, or 5 days after personal notice, of impending discontinuance.
Notice of rate changes or programming changes or deletions	Notice must be given to franchising authority and to subscribers at least 30 days before any programming or rate change.
Provision of cable service information to subscribers	Cable companies must provide each subscriber with written information concerning rates and programming. This information must be given to new subscribers upon installation, at least annually to all subscribers and upon request. Written notice of all service terms and policies, including billing and complaint procedures, must also be provided to new subscribers upon installation, at least annually to all subscribers, and upon request.
Distribution of promotional materials to subscribers	All promotional materials must clearly disclose rates, terms and conditions of the promotion. Company must retain copies for at least one year, and furnish copies to the local franchising authority upon request.

ISSUE	STANDARD
Services to disabled people	Company must provide remote control devices to disabled persons, and must utilize TTD equipment.
Customer surveys and research	Company must research customer needs on an ongoing basis. As part of such research, Company must conduct customer satisfaction surveys.
Service technician availability	Service and repairs must be completed in 24 to 72 hours. Company must maintain a maintenance service capable of locating and repairing malfunctions 24 hours per day.
Channel location card	Company must provide and annually update a channel lineup card.
Customer credit reporting	The company must not, and must instruct all collection agencies not to, refer any delinquent account to a credit agency. If the company refers a delinquent account less than 10 days after account becomes delinquent, it must notify the credit agency of the error and pay the subscriber $500.
Customer service supervisor response	Requests to speak to supervisors must be filled as soon as possible, but no later than 4 business hours after the request.
Foreign language requirements for customer service representatives	Company must have office employees who speak any language used by a substantial number of subscribers.
Damaged equipment	Subscriber is not liable for loss or damage caused by acts or events outside the subscriber's control.

ATTACHMENT C

NEW YORK STATE COMMISSION ON CABLE TELEVISION

In the Matter of 92-217

The Itemization of Franchise Fees) DOCKET NO. 90389
on Subscriber Bills)

STATEMENT OF POLICY

(Released: April 20, 1992)

During the past months, various cable companies in the state have commenced the practice of including all or a portion of a franchise fee as a separate line item on a subscriber's bill. The practice is manifest in one of two ways. In some instances, the franchise fee is one of many items, e.g., basic service, premium service, additional outlets, etc. listed in a single column, the amount for which is included with and added to all other amounts to arrive at a total amount due. In other instances, the bill recites the various services subscribed to and the amounts thereof, sets forth a subtotal of all such amounts and then includes an amount denominated "franchise fee" which, when added to the subtotal, creates a total amount due at the bottom of the bill. In the latter case, the franchise fee is treated in the same manner as a sales tax. In either case, the fee is stated as if it were a direct charge upon the subscriber.

Some companies have instituted this practice coincidental with a franchise renewal or current increase in the amount of the fee or both. For other companies, the practice is unrelated to the franchise term or any change in franchise fee requirements.

Because the practice raises fundamental issues concerning the effect of federal law and the relation of federal statute to state statute, Commission regulations and franchise fee provisions in cable television franchise agreements, the Commission has determined that it is appropriate at this time to issue a general statement of policy on franchise fee itemization and "pass-throughs."

Itemization of Fee

Section 622(f) of the Cable Communications Policy Act of 1984 ("Cable Act") (47 USC Section 542(f)) provides that "[a] cable operator may designate that portion of a subscriber's bill attributable to the franchise fee as a separate item on the bill." Consistent with this section, a cable operator may include on a subscriber's bill a separate statement indicating the portion of the bill--as a percentage or fixed amount--that will be payable as a franchise fee by the cable company to the franchising authority. This section is not authority for including a franchise fee as a separate billable line item on a subscriber's bill.

In this regard, we note that franchise agreements in New York State have traditionally required franchise fees based on a percentage of revenues--either all or some portion thereof--received by the company from subscribers and, in some cases, from other sources. In other words, the fee is calculated as a percentage of all revenues received without deduction or allocation for such portion of the revenues as may ultimately be paid by the cable company to the municipal government in fulfillment of the franchise fee obligation. This practice is fully consistent with Section 817 of the Executive Law which requires the Commission to impose an assessment upon cable companies calculated on "gross annual receipts."[1] The only exception from "gross annual receipts" recognized in the statute would include sales taxes which are imposed directly on subscribers. (See, e.g., Tax Law, Section 1131(2)) Neither the municipal franchise fee nor the amount of the Commission's assessment is excluded from "gross annual receipts."

The practice of billing the fee as a separate line item in addition to rates transforms the very nature of the fee from a component of doing business calculated on all revenues to a separate add-on charge imposed directly on subscribers. This practice also has the effect of transforming the very method by which the fee is calculated and, therefore, purports to modify the underlying statutory and franchise obligations. A simple example will illustrate the effect of itemization. Assume a cable company has been charging $20 per month for a service under a franchise which requires a franchise fee of 3%. The franchise fee attributable to such bill would be sixty cents. If the company determines to separate and itemize the fee as an add-on in the manner of a sales tax, the bill is likely to read as follows:

Basic service rate	---	$20.00
Franchise fee	---	$0.60
Total		$20.60

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1 Section 817(2) provides that the Commission "shall. . .bill and collect. . .[from cable companies]. . .the total direct and indirect costs necessary to operate and administer the commission for the. . .state fiscal year." Each company is required to pay a pro rata share of the commission's costs based upon its gross annual receipts when compared to the gross annual receipts of all companies.

"Gross annual receipts" is defined in Section 812(5) as follows: ". . .any and all compensation received directly or indirectly by a cable television company from its operations within the state, including but not limited to sums received from subscribers or users in payment for programs received and/or transmitted, advertising and carrier service revenue and any other moneys that constitute income in accordance with the system of accounts approved by the commission.

Gross annual receipts shall not include any taxes on services furnished by a cable television company imposed directly on any subscriber or user by any municipality, state, or other governmental unit and collected by the company for such governmental unit."

Apart from the fact that this is a rate increase subject to notice requirements (and government approval in the absence of effective competition), it is readily apparent that the company, by its own unilateral act, has purported to change the manner of calculating the fee by reducing the base from the total amount billed to an amount which is artificially described as the "rate." In fact, \$0.60 is but 2.91% of \$20.60 -- the total amount billed. If the fee is calculated as before -- 3% of the full amount billed -- the fee attributable to the bill would be sixty-two cents. We find nothing in the Cable Act to suggest that Congress intended to transform the nature of a franchise fee or to amend existing franchises by permitting cable television companies to reduce franchise fee obligations by manipulating the subscriber's bill in such manner. On the contrary, the effect of Section 622(a) was to increase from 3% to 5% of gross receipts the amount of franchise fees which could be required in a franchise.

It could be argued that a cable company is free to bill in this manner without also intending to modify its franchise fee obligation. If so, such a bill would be inaccurate and, therefore, misleading. Nothing in the Cable Act authorizes cable companies to engage in inaccurate and misleading billing practices.

We also note the likelihood that some cable companies would argue that the franchise fee is a tax and, as such, is a separately billable item. We need not finally determine whether the franchise fee is a tax for the simple reason that even if the franchise fee is in the nature of the tax, under New York State law it would be in the nature of a special franchise or real property tax; but clearly not in the nature of a sales tax.[2] The special franchise tax is imposed on the owner of the special franchise property, i.e., the cable company, and not on the subscriber directly. As such, it is simply a component of doing business similar to other non-sales taxes and business costs.

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[2] Section 626 of the Real Property Tax Law ("RPTL") provides as follows:

"1. (a) When a tax levied on a special franchise is due in any assessing unit, if the special franchise owner has paid such assessing unit for its exclusive use during the past year under any agreement or statute requiring the same, a sum based upon a percentage of gross earnings or other income, a license fee or other sum of money on account of such special franchise possessed by such special franchise owner, which payment was in the nature of a tax, all amounts so paid for the exclusive use of such assessing unit, except money paid or expended for paving or repairing the pavement of a street, highway or public place, and except in a city having a population of one hundred seventy-five thousand or more according to the latest federal census, car license fees or tolls paid for the privilege of crossing a bridge owned by the city, shall be deducted from the tax based on the assessment made by the state board for purposes of the assessing unit, but not otherwise, and the remainder shall be the tax on such special franchise payable for such propose."

In sum, it is our determination that franchise fees cannot be stated as a separate line item on subscriber bills as direct charges on subscribers. This policy does not prevent cable companies from informing subscribers on bills, or otherwise, of the fact that franchise fees are paid to government, including the specific amount of the fee attributable to an individual bill. It is consistent with the Cable Act because companies may include a statement on the bill which identifies the franchise fee without imposing a separate and direct charge for the fee itself.

Pass Through Provisions

We also take this opportunity to express our policy with respect to the so-called "pass through" provisions in the Cable Act. Section 622(c) of the Cable Act (47 USC 542(c)) provides that "[a] cable operator may pass through to subscribers the amount of any increase in a franchise fee unless the franchising authority demonstrates that the rate structure specified in the franchise reflects all costs of franchise fees and so notifies the cable operator in writing." Section 622(c) provides that "[a]ny cable operator shall pass through to subscribers the amount of any decrease in a franchise fee."

The issue here is whether these provisions have meaning in a deregulated cable community.

We note, initially, that for many years prior to the enactment of the Cable Act the rates for premium cable television services had been deregulated by the Federal Communications Commission ("FCC"). See Brookhaven v. Kelly, (428 F.Supp. 1216 N.D. New York (1977); 573 F.2d 765, 2d Cir. (1978)) We also note that in many, if not all, cable television franchise agreements in New York State a franchise fee is required to be paid based on revenues derived by the cable television franchisee from premium services or some portion thereof. In fact, at the time the Cable Act became law, cable companies could unilaterally price premium services to account for all costs including franchise fees and increases therein.

As a practical matter, the Cable Act did not alter the regulatory status of premium services. Section 623 of the statute provides that "[a]ny franchising authority may regulate the rates for the provision of cable service. . .provided over a cable system to cable subscribers, but only to the extent provided under this section." Section 623(b)(1) required the Federal Communications Commission to "prescribe and make effective regulations which authorize a franchising authority to regulate rates for the provision of basic cable service in circumstances in which a cable system is not subject to effective competition." Under Section 623, only basic cable service can be subject to rate regulation.[3] Cable companies remain free

[3] Although basic cable service is defined in such a way as it is theoretically possible that single channel premium services could be marketed as part of basic service, we are not aware of any such circumstances and it is unlikely that a cable company which is not subject to effective competition would choose to submit rates for premium service to regulation by such marketing practice.

to price "premium" services without the need for governmental review and approval--a right which transcends the more limited language in Section 622(c) which merely permits a rate increase in the event of an increase in franchise fees.

We note, as well, that historically, "pass-through" is used in utility ratemaking to permit a cost or change in cost to be included in the regulated rate borne by ratepayers.

It fully appears, therefore, that the pass-through provisions in Section 622(c) of the Cable Act are intended to enable cable television companies to increase regulated rates by an amount equal to any current increase in the franchise fee attributable to the regulated rate.[4] Similarly, the obligation imposed by Section 622(e) to decrease rates by any reduction in the franchise fee is only sensible in an environment where rates are regulated. Otherwise, there is no real benefit to subscribers. In sum, the pass-through provisions are redundant in rate deregulated communities. Granting to a cable company the unilateral ability to charge to subscribers whatever rate it wants--as the Cable Act does--transcends and makes meaningless cost pass-throughs which are reflective of a rate regulated environment.

SO ORDERED.

Commissioners Participating: William B. Finneran, Chairman; Theodore E. Mulford, John A. Passidomo, Barbara T. Rochman, Commissioners.

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[4] It is important to note here (1) that Congress sanctioned basic rate regulation for a minimum of two years following the effective date of the Cable Act for all cable systems irrespective of the existence of effective competition, and (2) that FCC regulations rather than statutory mandates caused most cable systems to be rate deregulated.